

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

NORFOLK SOUTHERN RAILWAY COMPANY,

Plaintiff,

v.

**CIVIL ACTION NO. 1:19CV202
(Judge Kleeh)**

MATRICULATED SERVICES, LLC.,

Defendant/ Third-Party Plaintiff,

v.

ADRIAN HOLDING, LLC.,

**Defendant/ Third-Party Defendant/
Counter Claimant.**

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 154] AND
GRANTING ADRIAN'S MOTION FOR DEFAULT JUDGMENT [ECF NO. 135]**

On November 1, 2019, the plaintiff, Norfolk Southern Railway Company ("Norfolk Southern"), filed this lawsuit against Matriculated Services, LLC ("Matriculated"), alleging that it had failed to pay certain railroad demurrage and other charges [ECF No. 1]. Matriculated answered the complaint and, with leave of the Court, filed a third-party complaint against Adrian Holding, LLC ("Adrian"), asserting various causes of action, including indemnity, contribution, and breach of contract or warranty [ECF No. 23]. Adrian timely answered and filed a counterclaim for breach of lease [ECF No. 32].

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Although Matriculated initially defended against Adrian's allegations, it ultimately abandoned this litigation. By previous Order, the Court granted Adrian's motion to strike Matriculated's third-party complaint and its answer to Adrian's counterclaim [ECF No. 119]. It also found Adrian to be entitled to entry of default, pursuant to Federal Rule of Civil Procedure 55(a). Id. The Clerk of the Court entered default against Matriculated on July 15, 2022 [ECF No. 122].

On January 11, 2023, Adrian filed the pending motion seeking entry of default judgment against Matriculated, pursuant to Federal Rule of Civil Procedure 55(b) [ECF No. 135]. The Court referred this motion to United States Magistrate Judge Michael J. Alois [ECF No. 136]. After conducting an evidentiary hearing on February 14, 2023, the magistrate judge entered a Report and Recommendation ("R&R") recommending that the Court grant Adrian's motion for default judgment [ECF No. 154]. Specifically, he found that Adrian had substantiated its claim for a sum certain and that it was entitled to entry of default judgment against Matriculated in the amount of \$197,966.09,¹ plus post-judgment interest. Id. at 8.

The R&R informed the parties that they had fourteen (14) days

¹ This includes Adrian's reasonable attorneys' fees and costs. Id. at 8.

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from the date of service of the R&R to file "written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." Id. It further warned them that the "[f]ailure to timely file objections . . . will result in a waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation."

Id. at 8-9. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b) (1) (C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, it has reviewed the R&R for clear error. Finding none, the Court **ADOPTS** the R&R in its entirety [ECF No. 154] and **GRANTS** Adrian's motion for default judgment [ECF No. 135]. It further directs the Clerk to enter an

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order of default judgment for a sum certain in favor of Adrian and against Matriculated in the amount of \$197,966.09 in damages, plus post-judgment interest pursuant to 28 U.S.C. § 1961.

It is so **ORDERED**.

The Clerk is directed shall transmit copies of this Order to counsel of record via email and Matriculated, via certified mail, return receipt requested, at its last known address.

DATED: March 22, 2023

Tom S Kline

THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA